

**REMARKS**

By this amendment, claims 1-10 and 12-39 are pending in the present application, of which claims 27-37 are withdrawn from consideration, and claims 1, 38 and 39 are currently amended. Claim 11 has previously been canceled without prejudice or disclaimer. No new matter is introduced.

The Final Rejection mailed July 9, 2010:

- (1) objected to claims 1, 38 and 39 based on certain asserted informalities;
- (2) rejected claims 1-26, 38 and 39 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention;
- (3) rejected claim 39 under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships;
- (4) rejected claim 39 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;
- (5) rejected claims 1, 2, 5-8, 10-15, 18-20, 23-26, 38 and 39 under 35 U.S.C. § 103(a) as being unpatentable over *Maissel et al.* (US 2003/0088872) in view of *Thomas* (US 7,134,130) in view of *Franzdonk* (US 2005/0021467); and
- (6) rejected claim 3 under 35 U.S.C. § 103(a) as being unpatentable over *Maissel et al.* (US 2003/0088872) in view of *Thomas* (US 7,134,130) in view of *Franzdonk* (US 2005/0021467), and further in view of *Hawley et al.* (US 2001/0021950);
- (7) rejected claim 4 under 35 U.S.C. § 103(a) as being unpatentable over *Maissel et al.* (US 2003/0088872) in view of *Thomas* (US 7,134,130) in view of *Franzdonk* (US 2005/0021467), and further in view of *Eaton et al.* (US 2004/0203377);

(8) rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over *Maissel et al.* (US 2003/0088872) in view of *Thomas* (US 7,134,130) in view of *Franzdonk* (US 2005/0021467), and further in view of *Nickum* (US 6,359,661);

(9) rejected claims 16 and 17 under 35 U.S.C. § 103(a) as being unpatentable over *Maissel et al.* (US 2003/0088872) in view of *Thomas* (US 7,134,130) in view of *Franzdonk* (US 2005/0021467), and further in view of *Kwoh et al.* (US 6,115,057);

(10) rejected claim 21 under 35 U.S.C. § 103(a) as being unpatentable over *Maissel et al.* (US 2003/0088872) in view of *Thomas* (US 7,134,130) in view of *Franzdonk* (US 2005/0021467), and further in view of *Herweck et al.* (US 5,731,763); and

(11) rejected claim 22 under 35 U.S.C. § 103(a) as being unpatentable over *Maissel et al.* (US 2003/0088872) in view of *Thomas* (US 7,134,130) in view of *Franzdonk* (US 2005/0021467), and further in view of *Chapman et al.* (US 6,216,228).

#### A. Objection to Claims 1, 38 and 39

The Office Action objected to claims 1, 38 and 39 based on the informalities that the claims are unclear as to whether the recited clause “via the ~~one or more users~~ wireless communications devices by wireless communications” of claim 1, and “via the users’ wireless communications devices by wireless communications” of each of claims 38 and 39, relates to the detecting the presence of the users element or the content consumption element of the respective claim. To reduce the issues on appeal in this matter, Applicants have amended each of independent claims 1, 38 and 39 to clarify that the via the communications devices clause of each claim relates to the detecting the presence of the users element of the respective claim. Specifically, as amended, independent claim 1 recites “wherein the detecting is performed via the

wireless communications devices by wireless communications,” and each of independent claims 38 and 39 recites “wherein the detecting is performed via the users’ wireless communication devices by wireless communications.” Accordingly, withdrawal of the objection is respectfully requested.

**B. 35 U.S.C. § 112, Second Paragraph, Rejection of Claims 1-26, 38 and 39**

The 35 U.S.C. § 112, second paragraph, rejection of claims 1-26, 38 and 39, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention, is respectfully traversed as addressed in the Appeal Brief submitted concurrently herewith.

With respect to the rejection of claim 39 under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships, to reduce the issues on appeal in this matter, Applicants have amended claim 39 to clarify the claim and thereby overcome the rejection. Specifically, Applicants have amended claim 39 to clarify that “a content receiver terminal” is caused to perform the steps recited in the claim, and that the detecting step consists of “detecting a presence of each of the users in at least one region in which content receivable by at least the content receiver terminal may be consumed.” Accordingly, withdrawal of the rejection is respectfully requested.

**C. 35 U.S.C. § 101 Rejection of Claim 39**

To reduce the issues on appeal in this matter, and in accordance with the suggestion of the Examiner, Applicants have amended independent claim 39 to recite “A non-transitory computer-readable storage medium,” which excludes transitory signals. Applicants, therefore,

respectfully submit that claim 39 is drawn to statutory subject matter, and request withdrawal of the rejection under 35 U.S.C. § 101.

**D. 35 U.S.C. § 103(a) Rejections of Claims 1-10, 12-26, 38 and 39**

The 35 U.S.C. § 103(a) rejections with respect to claims 1-26, 38 and 39, identified in items (5) – (11) above, are respectfully traversed as addressed in the Appeal Brief submitted concurrently herewith.

**E. Conclusion**

Therefore, the present application, as amended, overcomes the objection and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

December 13, 2010

Date

/Phouphanomketh Dithhavong/

Phouphanomketh Dithhavong  
Attorney/Agent for Applicant(s)  
Reg. No. 44658

Craig Plastrik  
Attorney/Agent for Applicant(s)  
Reg. No. 41254

918 Prince Street  
Alexandria, VA 22314  
Tel. (703) 519-9951  
Fax (703) 519-9958